
**Supreme Court No. 16-1419
Kossuth County No. CDCD002446**

**IN RE THE MARRIAGE OF JODI LYNN ERPELDING
AND TIMOTHY JOHN ERPELDING**

Upon the Petition of

JODI LYNN ERPELDING,

Petitioner-Appellant/Cross-Appellee,

And Concerning

TIMOTHY JOHN ERPELDING,

Respondent-Appellee/Cross-Appellant.

**APPEAL FROM THE IOWA DISTRICT COURT
FOR KOSSUTH COUNTY
THE HONORABLE PATRICK M. CARR**

**PETITIONER-APPELLANT/CROSS-APPELLEE'S
FINAL BRIEF AND
REQUEST FOR ORAL ARGUMENT**

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

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III. JODI SHOULD BE AWARDED APPELLATE ATTORNEY FEES.

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In re Marriage of Kurtt, 561 N.W.2d 385, 389 (Iowa App. 1997)

In re Marriage of Maher, 596 N.W.2d 561, 568 (Iowa 1999)

ROUTING STATEMENT

This case should be retained by the Supreme Court because it involves substantial questions of enunciating legal principles. Iowa R. App. P. 6.1101(2)(f). One legal principle is whether a prenuptial agreement may prohibit an award of attorney fees when alimony, child custody, and child support are at issue. A second legal principle involves the application of reimbursement alimony in the circumstances of a farm divorce. The question is whether a spouse's assistance in helping her farm spouse acquire farmland should stand on equal footing with that of helping a spouse to obtain a professional degree, when both situations result in the beneficiary spouse's increase in earning capacity.

STATEMENT OF THE CASE

Jodi Lynn Erpelding (“Jodi”, “Petitioner”, or “Appellant”) filed her Petition for Dissolution of Marriage on 2/9/15. Petition; App. 1-4. Timothy John Erpelding (“Tim”, “Respondent”, or “Appellee”) filed his answer on 2/18/15. Answer; App. 5-6. Jodi filed her Children in the Middle certificate on 3/9/15. Tim filed his on 4/06/15.

On 6/29/15, she filed Petitioner's Application for Temporary Custody, Spousal Support, Temporary Child Support and Temporary Attorney Fees. Application; App 7-9. On 7/2/15, the Court continued the temporary hearing until 8/24/15. Order, App. 14-15. On 7/9/15, Tim filed Respondent's Response to Petitioner's Application for Temporary Custody, Temporary Spousal Support, Temporary Child Support, and Temporary Attorney Fees. Response; App. 12-13.

On 8/17/15, the parties held a mediation on temporary matters. Ex. 301; Decree, 8; App. 8. On 8/21/15, Jodi, filed Petitioner's Withdrawal of Application for Temporary Orders. Withdrawal; App. 14.

On 09/16/15, Tim filed an Application for Children's Attorney. Application; App. 17-18. On 9/28/15, Jodi resisted. Resistance; App. 19-20. On 10/1/15, Jodi filed an Application for Temporary Allowance for

Expenses/Temporary Property Division. Application; App. 21-23. On 10/13/15, Tim filed a Response. Response; App. 24-27. On 10/23/15, the Court entered an order awarding Jodi \$20,000 and appointing attorney Greg Stoebe as guardian ad litem for the minor children. Order; App. 28-31. On 11/30/15, Jodi filed a Trial Brief.

Jodi filed her Affidavit of Financial Status on 11/30/15. Affidavit; App. 43-46. Tim filed his 10/14/15. Affidavit; App. 32-42. On 12/1/15, the parties filed a pretrial stipulation outlining their finances and matters in dispute. Pretrial Stip.; App. 47-61

The case proceeded to trial on December 2-3, 2015, January 5, 6 & 13 and February 9, 10, & 19 of 2016. Decree, 1; App. 82. On 3/2/16, Guardian Ad Litem Stoebe filed his Report and Recommendations. Report; App. 62-81. On 3/15/16, both parties filed post-trial briefs. (Briefs). On 3/22/16, Tim filed a Reply Brief.

On 7/28/16, the Court filed its Decree of Dissolution of Marriage and Child Support Guidelines Worksheets. Decree and Guidelines; App. 82-132. On 8/23/16, Jodi filed her Notice of Appeal. Notice of Appeal; App. 133-136. On 8/31/16, Tim filed a Notice of Cross Appeal. Cross Appeal; App. 137-138.

On 09/09/16, Jodi filed in District Court, her Notice of Election of her option to sell her share in a farm to Tim. On 10/6/16, Jodi filed her Notice of Reservation of All Right to Appeal While Accepting Traditional Alimony Award.

FACTUAL SUMMARY

The parties were married December 1, 1997. Tr. 43:14-15; App. 140. Tim was 51 and Jodi 46 at time of trial. Decree, 3; App. 84. At the time of the Erpelding marriage, their net worth was \$327,106. Ex. 52; App. 148. They separated in late January, 2015. Tr. 51:2-3; App. 148. At the time of their divorce, their net worth was \$8,339,361. Ex. 52; App. 614-629.

They had two children, boys W.E. and D.E. aged 14 and 9, at the time of trial. Decree, 2; App. 83.

The Decree awarded Tim assets valued at \$8,064,224 and responsibility for \$944,454 in debts for a net equity of \$7,119,770. Decree, 41-43; App. 122-124. The Decree awarded Jodi assets valued at \$810,334 and responsibility for her remaining \$45,575 in legal expenses. Tr. 158:7–159:11; Ex. 74-77, 82; Decree, 41-43; App. 122-124; 233-234; 653-674.

Tim is lifetime farmer in Kossuth County. Decree, 2; App. 83. The center of his farming operation is a farmstead and acreage a few miles east

of Algona on U.S. Highway 18. *Id.* Tim is a good businessman. Tr. 46:20-23; App. 143. The Erpeldings had a prosperous marriage. Tr. 44:10-15; 46:20-23; App. 141-143. Their net worth increased by \$4,800,980 over and above \$3,538,321 received by Tim in the form of gifts and inheritances. Tr. 237:9-239:11; Ex. 52; App. 270-272; 614-629. The Erpeldings, after taking into account fractional interests, owned the equivalent of 565 acres of farmland at the time of the trial and rented other land. Tr. 52:16-53:6; App. 149-150.

During the course of their marriage, Jodi was employed by the Iowa State Education Association (ISEA) in Algona, then Emmetsburg, and later in Clear Lake, Iowa. Tr. 44:16-45:16; Decree, 2; App. 141-142; 83. Jodi's economic contributions to the marriage, according to expert testimony, had a pre-tax present value of \$1,445,748 and an after-tax present value of \$1,084,316. Tr. 244:23-246:17; Ex. 52; App. 277-279; 614-629. Jodi also provided substantial non-economic contributions to the marriage. Tr. 45:17-46:1; App. 142-143. Jodi performed 90% of the childcare as compared to Tim. Tr. 150:7-12; App. 228.

Some of the assets Tim inherited were depreciable and provided tax benefits. Tr. 253:4-258:15; Ex. 4; App. 286-291; 521-540. Tim receives about \$120,000 of "inherited" depreciation each year. *Id.* This began in

2013 and will continue for seven years, totaling about \$840,000. *Id.* Although this is a non-cash expense, it is deductible for tax purposes and shelters Tim's income. *Id.* In 2014, Tim received another significant tax benefit from the sale of \$690,805 of inherited grain, of which, only \$128,700 was reported as taxable gain because of a stepped up income tax basis. Tr. 258:16 – 261:7; Ex. 4; App. 291-294; 521-540. Also, the taxable gain was sheltered due to the "inherited" depreciation. *Id.*

Under circumstances in some dispute, the parties executed a Prenuptial Agreement, on November 26, 1997, 5 days in advance of their December 1, 1997 wedding. Tr. 43:12-15; 62:17-19; Decree, 2, 10; App. 83, 91; 140, 159. The Trial Court found that Prenuptial Agreement was valid and enforceable. Decree, 25; App. 106.

The Trial Court ruled that by the terms of the Prenuptial Agreement, Jodi had contracted away her right to receive reimbursement alimony, and none was awarded. Decree, 32-33; App. 113-114. The Decree awarded Jodi traditional lifetime alimony of \$1,166 per month. Decree, 34-35; App. 115-116.

Jodi's Economic Contributions

At the time of the parties' marriage, Jodi was working in Algona. Decree, 3; App. 84. In 2001, shortly before the birth of W.E., her office

assignment was transferred to Emmetsburg, about 30 minutes west of Algona. *Id.* At that time, she worked a full 5-day, 40-hour week. *Id.* She left home a little after 7:00 a.m. and returned home about 4:45 to 5:00 p.m. Following W.E.'s birth in 2002, she continued to drive to Emmetsburg, but, by agreement, reduced her hours to 92 percent, working 4½ days each week. *Id.* Tr. 78:21-79:4, 147:18-148:15; App. 171; 224-226. Their second son, D.E. was born in 2005. Decree, 3; App. 84. In 2012, Jodi again reduced her employment schedule because of family responsibilities, this time to 4 days a week or about 80 percent of fulltime work. *Id.* In addition to accepting a direct reduction in earnings, Jodi also declined the opportunity to apply for a promotion, which paid in the range of \$120,000 annually. Tr. 79:21-80:22; App. 172-173.

Jodi testified that by agreement with Tim, her ISEA earnings were used for family and living expenses, which freed up cash to "grow equity in our farming". Tr. 156:16-158:6; App. 231-233. Jodi also provided all of the health insurance for the family. Tr. 148:19-149:2; Ex. 17; App. 226-227; 581. Jodi handled the Erpelding's farm related bookkeeping duties, signed most of the checks, and communicated with the family's CPA for tax purposes. Tr. 45:17-46:19; 151:4-152:12; 372:5-22; Ex. 18; App. 142-143, 229-230, 317; 582-583. Jodi was familiar with the family's farming

business, their finances, and the land involved. Tr. 46:24-59:7; App. 143-156. Tim pledged Jodi's interest in the Thill farm as collateral allowing him to purchase the McNeill farm that he placed in his name only. Tr. 598: 9-22; Decree, 13; App. 94; 350. The financial statements provided to the Erpelding Farm Lender listed Jodi as a participant. 142:9-145:3; App. 221-224.

Jodi also performed some on-farm work. Tr. 45:17-46:19; Ex. 18; App. 142-143; 582-583. Jodi began receiving payment in 2013 and 2014 when she received a W-2 for \$6,350 and \$7,521, respectively, for commodity wages. Tr. 324:4-18; 347:6-25; 353:10-24; Ex. 36; App. 312, 314, 315; 596;598.

Jodi contributed to the spending of \$185,000-\$195,000 in improving two different Erpelding residences, one of which is now Tim's homestead. Tr. 68:5-68:22; 162:13-166:16; 173:21-174:22; Ex. 12-13; App. 165, 237-243; 571-580. These properties were actually owned by Tim's father, William Erpelding. Tr. 162:13-165:9; App. 237-240. Jodi expressed concern to Tim about spending money on rented property: "I was worried about us putting our money into something we didn't even own, and he reassured me, he said, "My family is not that way" and that "We'll get credit in the end." Tr. 163:17-164:2; App. 238-239.

Jodi had a good relationship with Tim's father, William. Tr. 59:8-61:3; App. 156-158. William consulted with Jodi about the contents of his will. Tr. 59:24-60:22; App. 156-157. Ultimately, Tim's father did gift the homestead property to Tim. Tr. 165:7-166:5; App. 240-241. Tim also received a substantial inheritance when his father died in August of 2013. Tr. 59:8-13; App. 156.

Jodi retained expert, Al Ryerson who performed an overall economic analysis of the Erpelding marriage. Tr. 233:1-275:25; Ex. 50-55; App. 266-308; 607-652. He testified that Jodi's economic contributions to the marriage have a present pre-tax value of \$1,446,000 and \$1,084,000 for an after tax value. Tr. 241:23-246:19; Ex. 16, 18; App. 274-279; 580-583. This is over and above Jodi's contributions toward her pension which is valued \$57,357. Tr. 246:13-19; Decree, 41; App. 122, 279. Jodi urged the Trial Court recognize her financial contributions to the marriage, as well as her non-economic contributions toward childrearing and running the household with a combined award of property settlement and reimbursement alimony of about \$2,100,000. (Trial Brief 1-2; Post Trial Brief, 5-8).

Prenuptial Agreement

Jodi challenged the legality and enforcement of the Prenuptial Agreement at trial. Tr. 62:17-66:21; (Trial Brief; Post Trial Brief; Decree,

10-14); App. 91-95, 159-163. The Court, finding that the Prenuptial Agreement, "as relates to their property settlement, is clear and unambiguous," held that it was enforceable. Decree, p. 28; App. 109. The Court then awarded Tim the bulk of the parties' property. Decree, 41-43; App. 122-124.

The Parties' Income

The Court estimated Tim's net monthly income at \$8,145.40 and Jodi's at \$2,887.26. Guidelines; App. 126-132. The parties agreed that Jodi's gross monthly wages are \$3,458.10. Decree, 33; App. 114. While the Court considered that \$125,000 is a reasonable income to use for Tim, the Court chose to use \$150,000 when calculating child and spousal support, which is supported by other evidence. Decree, 33-34; Guidelines; App. 114-115.

Expert Ryerson testified that Tim's average income over the 6-year averaging period from 2009 to 2014 is \$149,799. Decree, 33; App. 114. Tim's agricultural expert, Dr. Michael McNeill testified that farm owners in Kossuth County have the opportunity to place their entire farms into a government conservation program – the CRP - which pays \$365 per acre. Tr. 403:16-406:22; App. 325-328. The arithmetic calculation of 565 acres multiplied by \$365 illustrates that if Tim chooses the CRP option, the

Erpelding land would generate \$206,225 in annual rental payments. The Erpelding's 2013-2014 farm schedule from their income tax returns reflect their real estate taxes to be in the \$16,000 - \$20,000 range. Ex. 4, 5; App. 521-570. The Court also noted that Tim has the opportunity to cash rent his land generating a gross income of \$148,500. Decree, 35; App. 116. The Erpelding's CPA, Aaron Greteman testified that if Tim sold all of his machinery, he would be able to retire all of his debt even after paying tax on the gain from the sale. Tr. 378:16-382:6; App. 319-323. Mr. Greteman also testified that a carry forward tax loss would allow Tim to be able to sell a quarter of a million dollars of grain in 2016 with no income tax. *Id.*

Split Custody and Child Support

The Court continued the temporary care arrangement negotiated by the parties at the mediation on temporary matters. Ex. 301; Decree, 14-22; App. 95-103; 686-687. The Court ordered Tim to pay Jodi monthly child support of \$741.58. Court Guidelines; App. 132.

The Trial Court Declined to Award Jodi Reimbursement Alimony Because of the Prenuptial Agreement

The Trial Court acknowledged that Jodi's efforts during the marriage financially benefited Tim. Decree, 32; App. 113. However, relying on the

Prenuptial Agreement, it declined to award Jodi reimbursement alimony, analyzing:

"The economic reality of these Parties' marriage, after accounting for the impact of the prenuptial agreement, was that the economic and other benefits that Petitioner conferred upon the marriage, including the provisions of medical insurance for the family, and her own personal savings, did, the court thinks, to some extent, free up cash flow generated by the Respondent's farming operation to be invested or reinvested in assets titled solely in his name. Under the clear terms of the Parties' prenuptial agreement, these assets accrue separately in favor of the Respondent.

As such, during the Parties' marriage, literally, on a day to day basis, the effective disposition of the Parties' income was impacting an award that would, on some date in the future, which date has now arrived, inure to the benefit of one to the exclusion of the other.

In this case it appears that efforts during the marriage by the Petitioner benefited the Respondent. In a case without a prenuptial agreement, this economic benefit conferred by the Petitioner would be reflected by a property settlement. The court notes that sacrifices and contributions made to the marital estate by one party or the other are factors to be considered in reaching an equitable property division."

"The facts of the case do not support reimbursement alimony as has been articulated by our Supreme Court, particularly in Marriage of Probasco. Unlike Probasco, in this case, the Petitioner previously contracted away an opportunity to be fairly compensated for her sacrifice and efforts by the execution of the prenuptial agreement. The request for reimbursement alimony must be denied."

Decree, p. 32; App. 113.

***The Trial Court Declined to Award Jodi Attorney Fees
Because of the Premarital Agreement***

On 10/23/15, the Trial Court awarded Jodi \$20,000 on a temporary basis for legal expenses. 10/23/15 Order; App. 28-31. Jodi used this all up for experts, appraisals, and legal expense. Tr. 158:7–159:11; App. 234-235. At time of trial, Jodi still owed \$7,773.75 to Mr. Ryerson after paying \$5,000 to his firm, BCC advisors earlier. *Id.*; Ex. 74; App. 653. Jodi still owed \$37,802.30 to her attorneys at the time of trial. Tr. 1308:1-23; 1675:7-20; Ex. 75-77, 82; App. 452, 519; 653-674.

The premarital Agreement, which prohibited an award of attorney fees as part of a divorce proceeding, provided:

"c. Except as provided in Paragraphs "a" and "b" immediately above, the Parties shall have no rights to ... attorney fees and expenses upon the filing of a petition ... divorce upon the court granting any such petition and thereafter."

Ex. 19; App. 586.

Jodi litigated a significant dispute over primary physical care and the issues associated therewith. Tr. 43:6-44:9; Decree, 1-10, 14-22, 29-30, 34, 38-39; Guidelines; App. 82-91, 95-103, 110-111, 115, 119-120, 126-132, 140-141. The Trial Court “expressed concern to counsel that it did not seem fair that a party with vastly superior resources could, as in this case, as a

result of a pre-marital agreement, possess a great deal of money with which to fund litigation over such an important issue as child custody.” Decree, 36; App. 117. It also said, “This court has always viewed an award of counsel fees as a way to allow each party to a marriage to make a fair fight of it at trial.” *Id.* However, the Trial Court, relying on the premarital agreement as well as Iowa Code § 596.5(1)(g), denied any award to Jodi for attorney fees, holding:

"[I]n the absence of any articulated public policy of the State of Iowa, the court thinks it does not have authority to ignore the plain language of the Parties' prenuptial agreement. Accordingly, the court will decline to award attorney fees."

Decree, 37; App. 118.

ARGUMENT

I. THE DISTRICT COURT'S DECREE, WHICH FAILED TO AWARD JODI REIMBURSEMENT ALIMONY AND COMBINED WITH ITS UNEQUAL DIVISION OF ASSETS, IS INEQUITABLE AND SHOULD BE MODIFIED.

A. Preservation of Error.

Jodi preserved error by seeking a property settlement, as well as both reimbursement and traditional alimony at trial. Pretrial Stip., 8; App. 54. Also, she raised these issues in her Trial Brief, in her Post Trial Brief and by timely filing her Notice of Appeal. (Trial Brief; Post Trial Brief); Notice;

App. 133-136. At trial, Jodi challenged “both the validity and the extent of enforceability of the premarital agreement.” (Trial Brief, 2-5; Post Trial Brief, 4-5). Jodi urges that the pre-nuptial becomes substantively and procedurally unconscionable because of the absence of a reimbursement alimony award and because of the inadequate traditional alimony award.

B. Scope and Standard of Review.

“Appeals regarding the dissolution of marriage are equitable proceedings.” *In re Marriage of Schenkelberg*, 824 N.W.2d 481, 483 (Iowa 2012). The standard of review is de novo. *Id.* The court gives weight to the fact findings of the district court, but is not bound by them. Iowa R. App. P. 6.904(3)(g) (2009). “Precedent is of little value as our determination must depend on the facts of the particular case.” (citations omitted). *In re Marriage of Fennelly and Breckenfelder*, 737 N.W.2d 97, 100 (Iowa 2007). “Although our review of the trial court’s award is de novo, we accord the trial court considerable latitude in making this determination and will disturb the ruling only when there has been a failure to do equity.” *In re Marriage of Schriener*, 695 N.W.2d 493, 496 (Iowa 2005).

C. The District Court's Decree, Which Failed to Award Jodi Reimbursement Alimony and Combined with its Unequal Division of Assets, Is Inequitable and Should be Modified.

Iowa Code § 598.21(5) (2007) establishes the criteria to be followed in property division. The assets of the parties should be divided equitably, not necessarily equally. *In re Marriage of Bonnette*, 584 N.W.2d 713, 714 (Iowa App. 1998). The partners to a marriage are entitled to a just and equitable share of property accumulated through their joint efforts. *In re Marriage of Gonzalez*, 561 N.W.2d 94, 98 (Iowa App. 1997). A percentage division is not mandated, nor is an equal division. *In re Marriage of Dean*, 642 N.W.2d 321, 323 (Iowa App. 2002).

Prenuptial agreements are governed by Iowa Code § 596.5. Alimony may not be restricted by a premarital agreement. Iowa Code § 596.5(2) (2015); *In re Marriage of Shanks*, 758 N.W.2d 506, 513 (Iowa 2008). A court may set aside or modify a pre-nuptial agreement on the grounds it is unconscionable. *Id.* at 513-520.

An award of alimony depends on the circumstances of each particular case. *In re Marriage of Dieger*, 584 N.W.2d 567, 570 (Iowa App. 1998). Rather than employing “any fixed or mathematical formula”, the courts should “equitably award spousal support” by considering each of the criteria

contained in Iowa Code § 598.21(A)(1). *In re Marriage of Mauer*, 874 N.W.2d 103, 107 (Iowa 2016). In calculating spousal support, it is proper to look at the effect of a premarital agreement and the assets each party received. *In re Marriage of Schenkelberg*, 824 N.W.2d 481, 487 (Iowa 2012)

"We consider alimony and property division together in assessing their individual sufficiency. They are neither made nor subject to evaluation in isolation from one another." *In re Marriage of McLaughlin*, 526 N.W.2d 342, 345 (Iowa App. 1994). Inherited and gifted property can be considered in determining alimony. *In re Marriage of Moffatt*, 279 N.W.2d 15, 20 (Iowa 1979); *In re Marriage of Weiss*, 496 N.W.2d 785, 788 (Iowa App. 1992).

An award of spousal support is a balancing of the equities. *In re Marriage of Clinton*, 579 N.W.2d 835, 839 (Iowa App. 1998). The three types of alimony are described as follows:

Alimony is awarded to accomplish one or more of three general purposes. *Rehabilitative alimony* serves to support an economically dependent spouse through a limited period of education and retraining. Its objective is self-sufficiency. An award of *reimbursement alimony* is predicated upon economic sacrifices made by one spouse during the marriage that directly enhance the future earning capacity of the other. *Traditional alimony* is payable for life or for so long as a dependent spouse is incapable of self support. The amount of alimony awarded

and its duration will differ according to the purpose it is designed to serve.

In re Marriage of Hayes, 2012 WL 2407540, 2
(Iowa App. 2012)

A spouse's contribution to the other spouse's increased earning potential is a factor properly considered in the award of alimony and an equitable division of the parties' assets. *In re the Marriage Francis*, 442 N.W.2d 59, 61 (Iowa 1989). Reimbursement spousal support allows the spouse receiving the support to share in the other spouse's future earnings in exchange for the receiving spouse's contributions to the source of that income. *In re Marriage of Becker*, 756 N.W.2d 822, 826 (Iowa 2008). Reimbursement alimony is "similar to a property award, but based on future earning capacity rather than a division of tangible assets, it should be fixed at the time of the decree." *Francis*, 442 N.W.2d at 64.

Although our courts have identified three types of alimony, a court need not specify which type is being awarded. *Becker*, 756 N.W.2d at 827. "[T]here is nothing in our case law that requires us . . . to award only one type of support." *Id.*

***The Trial Court Misinterpreted the Law in Failing to Award
Jodi Reimbursement Alimony***

The District Court misinterpreted the law in failing to award Jodi reimbursement alimony. The District Court recognized the presence of elements supporting an award of reimbursement alimony, finding: "[I]n this case it appears that efforts during the marriage by the petitioner benefited the respondent" and that Jodi's efforts did "free up cash flow generated by respondent's farming operation to be invested or re-invested in assets titled solely in his name." Decree, 32; App. 113. However, the Court ruled: "in this case, the Petitioner previously contracted away an opportunity to be fairly compensated for her sacrifice and efforts by the execution of the prenuptial agreement." *Id.*

Alimony may not be restricted by a premarital agreement. Iowa Code § 596.5(2) (2015); *Shanks*, 758 N.W.2d at 513. Also, the court may consider the effects of a premarital agreement and the distribution of assets when considering alimony. *Schenkelberg*, 824 N.W.2d at 487. Here, Tim received the vast majority of the parties' assets and almost all of the farmland. These assets were accumulated to a significant extent because of Jodi's contributions.

A typical factual circumstance supporting reimbursement alimony is when one spouse contributes toward the other spouse's acquisition in an advanced professional degree. *In re Marriage of Probasco*, 676 N.W.2d 179, 184-185 (Iowa 2004). It is axiomatic that a career goal of every farmer is to acquire farmland. It is also axiomatic that a farmer's acquisition of farmland increases his earning potential. Whether Jodi's financial sacrifices supported Tim in furthering his farming profession or in pursuit of a post graduate degree, the result is the same. Tim has benefited from the increased earning potential his land provides him. Tim's own agricultural expert, Michael McNeill, testified that the Erpelding land was capable of generating \$206,225 in income each year from government CRP programs. An award of reimbursement alimony should not be limited to only those situations involving professional degrees. To hold otherwise would elevate the divorce rights for farmers over those of persons with professional degrees. Farmers with prenuptials would be granted immunity from paying reimbursement alimony but medical doctors with a prenuptial would have to pay reimbursement alimony. Iowa case law or an interpretation of existing case law does not support granting farmers such a privileged status. Jodi should be compensated for her contributions by an award of reimbursement alimony.

***The Trial Court's Failure to Award Reimbursement Alimony
was Inequitable Considering Jodi's Economic Contributions
and Her Salary Sacrifice***

The Erpeldings accumulated over \$8,000,000 in assets during their marriage. Jodi urged the trial Court that should her challenge to the general validity of the pre-marital agreement be unsuccessful, her contributions should be recognized by an award of reimbursement and/or traditional alimony. (Trial Brief, Post Trial Brief)

Jodi's expert, Al Ryerson testified, providing his analysis of the economic basis for awarding reimbursement alimony to Jodi. Tr. 244:3-246:19; Ex. 52; App. 277-279. Ryerson's exhibits are 51-55. App. 607-652. Ryerson opined the Erpelding equity increased \$4,800,990 during the marriage. Tr. 238:1-25; Ex. 52; App. 271; 614-629. This is over and above \$3,538,321 in property received by Tim through gift and inheritance. Ex. 52; App. 614-629. Ryerson testified Jodi contributed services having a before tax value of \$1,446,000 and after tax value of \$1,084,000. Ex. 52; App. 614-629. Jodi's pension contributions of \$57,357 are in addition. Tr. 240:13-17; 246:13-19; App. 273, 279. This increases the value of Jodi's contributions to \$1,503,714 and \$1,141,357.

Jodi contributed her time, talent and earnings to the family so the Erpeldings could “grow equity in our farming.” Tr. 45:20-46:1, 157:4-21; Ex. 16, 18, 52; App. 142-143, 232; 580, 582-583, 614-629. The parties did not intend that Tim would be the sole beneficiary of Jodi’s sacrifices and contributions. Jodi’s contribution toward the family living expenses combined with her unpaid farm labor freed up funds used to purchase additional farmland that was placed in Tim’s name. Decree, 32; App. 113. Jodi, in addition to contributing her ISEA earnings, performed services to the family farming operation that had an economic benefit. *Id.* Although Tim disputed the value of her services, the W-2’s he gave her, \$6,350 in 2013 and \$7,521 in 2014, are evidence of her efforts. Tr. 324:4-18; 347:6-21; 353:10-24; Ex. 36; App. 312, 314-315. Even using Tim’s valuation, Jodi’s farm work and accounting contributions over an eighteen-year marriage would have a present value totaling more than \$100,000. This is another factor supporting an award of reimbursement alimony.

Jodi’s childcare responsibilities caused her to reduce her work hours by 20%. Tr. 148: 2-5; Ex. 16; App. 226; 580. This resulted in a sacrifice of both past and future earnings. Simple arithmetic can help to determine Jodi’s salary sacrifice. Jodi’s 2014 wages were \$47,036 with \$39,515

coming from ISEA, and the balance being commodity wages. Ex. 4, 36; App. 521-541; 595-598. Dividing \$39,515 by 80% extrapolates a full time salary of \$49,394. Jodi's reduction in hours translates to salary sacrifice of about \$10,000 annually. Not only has this reduction affected Jodi in the past, it is likely to continue indefinitely, as there is no evidence that Jodi can renegotiate her contract. Jodi is about 46 years old. Assuming Jodi works another 18 years, the future salary sacrifice may total an additional \$200,000. These factors support an award of substantial reimbursement alimony.

Jodi has been active in her Iowa Professional Associate Staff Union, advancing to the Office of State of Iowa President until she stepped back in September of 2015. Jodi testified that in about 2010, she had an opportunity for the UniServ Director position, which offers a salary of about \$120,000.00 a year. Jodi wanted to maintain her status as a hands on mother, rather than delegating her parenting duties to hired help as suggested by Tim. Tr. 79:21-80:22; 84:14-24; App. 172-173, 177. Jodi turned down this opportunity. Tr. 79:21-80:17; App. 172-173. Had Jodi sought this job, she would have earned roughly an additional \$80,000 per year. Assuming another 18 years of work life, the simple math indicates this lost opportunity constitutes an additional \$1,440,000 in salary sacrifice for Jodi.

In considering the property settlement and alimony, the court should consider the valuation of the services – both economic and non-economic – that Jodi provided during the marriage. The court should also consider the career sacrifices of Jodi by reducing her hours at ISEA and foregoing the opportunity for promotion.

Had the roles for Jodi and Tim been reversed and Tim had made himself more available to the family by taking a 9:00 to 4:00 job, Jodi may have progressed to an executive position with ISEA and been well-fixed in asset accumulation, as well as earning potential. Conversely, Tim would have not had accumulated \$8,064,224 in farm assets titled in his name. Last but not least, Tim's father, Bill, may not have had the same motivation to gift Tim the home farm and millions of dollars of tax free grain. Jodi's contributions allowed Tim to amass a fortune and position himself as the primary Erpelding heir. These factors support an award of substantial reimbursement alimony.

Jodi urges she should be awarded reimbursement alimony of at least \$600,000.

D. The District Court's Award of Traditional Alimony to Jodi is Inadequate and Inequitable and Should be Increased Considering the Court's Failure to Award Reimbursement Alimony and the Inequitable Division of Assets.

Although Jodi urges that grounds exist to award her significant reimbursement alimony, should the court determine otherwise, Jodi requests a significant increase of her award of lifetime traditional alimony. Jodi repeats the authorities and arguments in paragraph "C". Tim's monthly income is \$8,145.40 and Jodi's is \$2,887.26. Even after payment each month of \$1,166 in alimony and \$742 in child support, an increase in traditional alimony is justified. Tim's income will continue to be sheltered for several years because of his inherited depreciation. An increase of monthly alimony from \$1,166 to \$2,200 each month, until death, is appropriate.

E. The District Court's Property Settlement Award to Jodi Was Inequitable, and Combined With the Court's Failure to Award Jodi Reimbursement Alimony Renders the Pre-Nuptial Unconscionable, and Should be Modified.

Although Jodi urges that grounds exist to award her significant reimbursement alimony or increased traditional alimony, should the court determine otherwise, Jodi requests a significant increase in her property settlement award. A court may set aside or modify a pre-nuptial agreement

on the grounds it is unconscionable. *Shanks*, 758 N.W.2d at 513-520. While the Erpelding prenuptial agreement may be valid in the abstract, it becomes substantively and procedurally unconscionable as a result of the District Court's denial of an award of reimbursement alimony to compensate Jodi for her contributions. Under these circumstances, this court has authority to, and should, modify the Decree to award Jodi an additional \$600,000 in property settlement.

II. THE DISTRICT COURT'S FAILURE TO AWARD JODI ATTORNEY FEES WAS AN ABUSE OF DISCRETION.

A. Preservation of Error.

Jodi preserved error by seeking her attorney fees at trial. Pretrial Stip., 10; (Post Trial Brief, 4-5, 9); App. 56. She timely filed her Notice of Appeal.

B. Scope and Standard of Review.

A grant of attorney fees is reviewed on an abuse of discretion standard. *In re Marriage of Sullins*, 715 N.W.2d 243, 247 (Iowa 2006). A court may consider expert fees in an award of attorney fees. *Schenkelberg*, 824 N.W.2d at 488.

C. The District Court's Failure to Award Attorney Fees Was an Abuse of Discretion.

Over an eight-day trial, Jodi was necessarily incurred substantial legal expenses to litigate a complicated dissolution case with child custody, a pre-nuptial agreement, property settlement and alimony, all in dispute. The Decree left Jodi with owing significant legal expenses and an unequal and inequitable property division. Her obligation for legal fees significantly impacts her net award. Because Tim was awarded the bulk of the parties' assets, requiring him to pay Jodi's fees will not significantly impair his net award. Whether attorney fees should be awarded depends on the respective abilities of the parties to pay." *Sullins*, 715 N.W.2d at 255.

The Premarital Agreement Provision Prohibiting an Award of Attorney Fees is Unconscionable and Violates Public Policy

Jodi urges that the Prenuptial Agreement provision relied upon by the Trial Court to deny awarding Jodi reasonable attorney fees and litigation expenses is unconscionable and void as against public policy. Neither alimony, custody, nor child support can be circumscribed by a pre-marital agreement. Iowa Code § 596.5. It would violate public policy to leave a spouse without means to litigate the best interests of her children, the validity of a premarital agreement and the provisions of alimony. Although

counsel could find no Iowa cases directly on point, South Dakota, like Iowa appears to have adopted the Uniform Premarital Agreement Act. *Sanford v. Sanford*, 694 N.W.2d 283, 288 (S.D. 2005). Because the act prohibits prenuptials from precluding alimony, it is a “logical extension” that awarding attorneys fees to secure alimony awards cannot be prohibited. *Walker v. Walker*, 765 N.W.2d 747, 755 (S.D. 2009). Because the act prohibits prenuptials from regulating child custody and child support, it follows that awarding attorney fees to seek child custody and child support cannot be prohibited.

Tim has sufficient resources from which to contribute toward Jodi’s legal expenses. At time of trial, Jodi still owed \$7,773.75 to BCC advisors and \$37,802.30 to her own attorneys. Ex. 74, 82; App. 653-656, 674. It is equitable for Tim to pay Jodi’s attorney fees and all of the costs on appeal. The District Court’s ruling should be modified to so order.

III. JODI SHOULD BE AWARDED APPELLATE ATTORNEY FEES.

A. Preservation of Error.

Jodi timely filed her Notice of Appeal. Jodi requests attorney fees on appeal, which preserves it for appellate review.

B. Scope and Standard of Review.

An award of appellate attorney fees is not a matter of right but rests within the discretion of the appellate court. *In re Marriage of Kurtt*, 561 N.W.2d 385, 389 (Iowa App. 1997).

C. Tim Should be Required to Pay Jodi's Appellate Attorney Fees and All Costs on Appeal.

In determining whether a party is entitled to appellate attorney fees, courts consider the needs of the party making the request, the ability of the other party to pay, and whether the party was required to defend the district court's decision on appeal. *In re Marriage of Maher*, 596 N.W.2d 561, 568 (Iowa 1999).

Jodi asks that Tim be required to pay her attorney fees, as well as her appellate attorney fees and court costs. Jodi's attorney will file a separate Affidavit setting forth the amount of attorney fees Jodi incurred as the result of this appeal. She also requests that Tim be ordered to pay any additional guardian ad litem expenses that are taxed as part of this appeal.

CONCLUSION

For all of the above reasons, Petitioner/Appellant respectfully requests the Court modify the Decree of Dissolution of Marriage to award

reimbursement alimony, increased traditional alimony and/or an increased property settlement award. Jodi also requests the Court order Tim to pay all of Jodi's attorney fees and appellate attorney fees and all costs of appeal, including additional Guardian Ad Litem fees.

REQUEST FOR ORAL ARGUMENT

Petitioner/Appellant Jodi Lynn Erpelding respectfully requests that oral argument be granted.

ATTORNEY'S COST CERTIFICATE

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Dated: December 7, 2016.

RESPECTFULLY SUBMITTED,



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PROOF OF SERVICE AND CERTIFICATE OF FILING

I certify that on December 7, 2016, I electronically filed the foregoing document with the Clerk of the Supreme Court of Iowa using the Iowa Judicial System Electronic Document Management System, which will send notification of such filing to the counsel below:

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